

ORIGINAL

MEMORANDUM

February 5, 1998

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (JAEGER) *RRJ*

RE: DOCKET NO. 950495-WS - APPLICATION FOR RATE INCREASE IN SERVICE AVAILABILITY CHARGES BY SOUTHER STATES UTILITIES, INC. FOR ORANGE-OSCEOLA UTILITIES, INC. IN OSCEOLA COUNTY, AND IN BRADFORD, BREVARD, CHARLOTTE, CITRUS, CLAY, COLLIER, DUVAL, HIGHLANDS, LAKE, LEE, MARION, MARTIN, NASSAU, ORANGE, OSCEOLA, PASCO, PUTNAM, SEMINOLE, ST. JOHNS, ST. LUCIE, VOLUSIA, AND WASHINGTON COUNTIES.

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The attached letter dated January 29, 1998 was mailed directly to me, staff, the Commissioners, and all parties.

Please place in above-referenced docket file.

RRJ/lw

Attachment

ACK \_\_\_\_\_ cc: (without attachment) Division of Water and Wastewater (Willis,  
AFA \_\_\_\_\_ Chase, Rendell)  
APP \_\_\_\_\_ All Parties  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_  
EAG \_\_\_\_\_  
LEG \_\_\_\_\_  
LIN \_\_\_\_\_  
OPC \_\_\_\_\_  
RCH \_\_\_\_\_  
SEC  \_\_\_\_\_  
WAS \_\_\_\_\_  
OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE  
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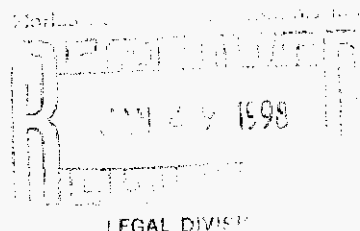
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January 29, 1998

**HAND DELIVERY**

Ralph Jaeger, Esq.  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Room 370H  
Tallahassee, FL 32399-0850



Re: Docket No. 950495-WS

Dear Mr. Jaeger:

As you know, our firm represents Florida Water Services Corporation ("Florida Water"). This letter is provided on behalf of Florida Water and is directed to the January 22, 1998 staff recommendation filed in the above-referenced docket. I am compelled to write this letter because staff has recommended that participation on this matter be limited to Commissioners and staff.

I direct your attention to Issue 2 in the recommendation which is discussed on pages 8-10. That issue focuses on the security to be provided by Florida Water to protect the ratepayers in light of issues raised in the pending appeal of the October 30, 1996 final order issued in this rate case. Specifically, it appears that the staff has misunderstood the purpose of the security required pending the appeal of this matter.

Back in January of 1996, Florida Water was granted an interim revenue increase in this proceeding.<sup>1</sup> The interim revenue increase was conditioned upon Florida Water filing a letter of credit, bond or escrow agreement to provide security for potential refunds. Based on the Commission calculation of potential refunds of \$5,864,375,<sup>2</sup> Florida Water filed a bond in the amount of

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<sup>1</sup>Order No. PSC-96-0125-FOF-WS issued January 25, 1996.

<sup>2</sup>Id., at 12.

Ralph Jaeger, Esq.

Page 2

January 29, 1998

\$5,864,375 in January, 1996. The \$5.8 million interim revenue refund bond was filed to provide security in the event the interim revenue increase granted by the Commission was ordered to be refunded in full.

Subsequently, on December 3, 1996, Florida Water filed a motion to: (1) stay the refund of interim rates; (2) stay the reduction to AFPI charges pending appeal; and (3) release/modify the bond securing the refund of interim rates. On January 27, 1997, the Commission issued Order No. PSC-97-0099-FOF-WS granting in part and denying in part Florida Water's motion. First, the Commission granted Florida Water's request to stay the refund of interim revenues collected from the Lehigh and Marco Island wastewater customers. Second, the Commission denied Florida Water's motion to stay the reduction of AFPI charges.<sup>3</sup> Third, the Commission denied Florida Water's request to modify the January 1996 interim revenue refund bond from \$5.8 million to \$2.5 million. It is this last aspect of the Commission's January 27, 1997 order which appears to premise the mistaken assumption underlying the staff's January 22, 1998 recommendation.

On page 7 of the January 27, 1997 order, the Commission required Florida Water to renew its interim revenue refund bond (which Florida Water did). The order makes it clear that the reason for requiring renewal of the bond was to maintain adequate security in light of anticipated revenue requirement issues in the pending appeal.<sup>4</sup> The order, of course, did not reflect a calculation or determination of the amount of revenue requirement refunds potentially at issue in the appeal as briefs had not even been filed at that point.

The January 27, 1997 order also required Florida Water to continue providing reports of interim revenues subject to refund. Florida Water has continued to provide the interim revenue refund reports ordered by the Commission. These interim revenue refund reports, the most recent of which was filed on January 15, 1998, and the bond, are premised on the Commission's erroneous assumption that the total amount of the interim revenue increase continues to be subject to refund. That is clearly not the case. Staff has calculated a total amount of \$967,560 at risk for the ratepayers

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<sup>3</sup>On February 11, 1997, Florida Water requested reconsideration of the denial of its motion to stay the reduction to AFPI charges pending the disposition of the appeal. On May 29, 1997, the Commission issued Order No. PSC-97-0613-FOF-WS granting Florida Water's motion for reconsideration by maintaining the pre-rate case AFPI charges that were higher than those approved by the final order pending the appeal. Subsequently, in its answer brief filed with the First District Court of Appeal, the Commission conceded that its elimination of previously approved AFPI charges was in error.

<sup>4</sup>Order No. PSC-97-0099-FOF-WS, at 7.

Ralph Jaeger, Esq.  
Page 3  
January 29, 1998

in the pending appeal of the final order in this proceeding.<sup>5</sup>

Based on the foregoing, Florida Water maintains that the Commission should authorize the release of the \$5.8 million interim revenue refund bond and substitute the corporate undertaking referenced in the recommendation for purposes of appeal. Clearly, security for revenue requirements on appeal is what the Commission intended in its January 27, 1997 order when it required Florida Water to maintain its interim revenue refund bond contemporaneous with the stay that it granted in the same order pending disposition of the appeal. There is simply no need to require Florida Water to maintain that bond (and pay the anticipated renewal premium) and post a corporate undertaking in the amount of \$967,560 when staff has calculated the total appeal refund liability to be no more than the \$967,560 amount.

I would ask that you discuss the concerns of Florida Water outlined in this letter with staff and let me know your thoughts. If staff adheres to its recommendation to unnecessarily require Florida Water to maintain its existing bond and post the corporate undertaking, Florida Water will respectfully request the opportunity to briefly address the Commission at the February 3 Agenda Conference to correct the apparent misapprehension of the facts on the part of the staff. If we are denied that opportunity and the Commission adopts the staff recommendation, I expect that we will seek reconsideration for the same purpose.

Thank you for your consideration of the facts and concerns expressed in this letter.

Sincerely,



Kenneth A. Hoffman

KAH/rl

cc: Honorable Julia L. Johnson, Chairman, by hand delivery  
Honorable E. Leon Jacobs, by hand delivery  
Honorable Joe Garcia, by hand delivery  
Honorable J. Terry Deason, by hand delivery  
Honorable Susan Clark, by hand delivery  
Mr. Marshall Willis, by hand delivery  
Ms. JoAnn Chase, by hand delivery  
Mr. Troy Rendell, by hand delivery

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<sup>5</sup>January 22, 1998 staff recommendation, at 8, 10.

Ralph Jaeger, Esq.

Page 4

January 29, 1998

Charles J. Beck, Esq., by hand delivery

Remaining Parties of Record, by U. S. Mail

Matthew J. Feil, Esq., by U. S. Mail